

Appln No. 10/618,033
Amdt date October 1, 2007
Reply to Office action of May 31, 2007

REMARKS/ARGUMENTS

As a preliminary matter, Applicant objects to the finality of this Office action. As stated in MPEP §706.07(a), entry of a final rejection is *not* proper "where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." Applicant has not filed any information disclosure statement that would render the finality of this Office action proper. In addition, although the examiner asserts that the "action is considered final because of the amendments to the claims submitted 11/15/2006," the Examiner has already issued a Final Rejection dated January 25, 2007 based on those amendments. Applicant has not introduced any new amendments to the claims since the November 15, 2006 amendment (which was actually filed on November 9, 2006). Rather, Applicant's April 4, 2007 response to the January 25, 2007 Final Rejection included arguments and Declaration that the Examiner has deemed sufficient to overcome the previous rejections. As Applicant did not amend the claims in response to the January 25, 2007 Final Rejection, the new art cited in the present Office action could have been cited in the January 25, 2007 Final Rejection. However, the response filed April 4, 2007 to January 25, 2007 included no amendments to the claims, and therefore could not have necessitated the new grounds of rejection. Accordingly, Applicant submits that the finality of this Office action is improper and respectfully requests withdrawal of the finality of the Office action.

Turning to the claim rejections, the Examiner rejected claims 1-8 and 18 under 35 U.S.C. §102(b) as allegedly anticipated by Bonutti (U.S. Patent No. 5,814,073) and rejected claims 9-13 under 35 U.S.C. §103(a) as allegedly obvious over Bonutti. However, Applicant has amended independent claims 1 and 18 to recite an elongated, *generally flexible* tubular body. Bonutti fails to teach or suggest such a feature. Rather, Bonutti discloses a tubular inner member and a tubular outer member, both of which are rigid. Column 4, lines 40-41 and column 5, lines 38-39.

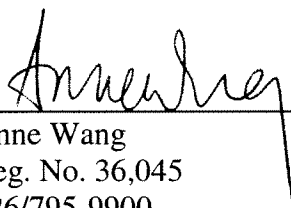
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Accordingly, independent claims 1 and 18, and all claims dependent therefrom, including claims 2-8, are allowable over Bonutti.

The Examiner also rejected claims 14-17 and 19 under 35 U.S.C. §103(a) as allegedly obvious over Bonutti in view of Wallace, et al. (U.S. Patent No. 6,254,628) or Devos, et al. (U.S. Patent No. 6,099,511). However, each of claims 14-17 and 19 depends from one of independent claims 1 and 18, both of which are allowable over Bonutti as discussed above. Neither Wallace nor Devos remedy the deficiencies of Bonutti, as neither of these references disclose the catheters recited in independent claims 1 and 18. Therefore, independent claims 1 and 18, and all claims dependent therefrom, including claims 14-17 and 19, are allowable over Bonutti, Wallace and Devos.

Claims 1-19 remain pending in this application, with claims 20-22 being withdrawn from consideration. In view of the above remarks, Applicant submits that all of pending claims 1-19 are in condition for allowance. Applicant therefore respectfully requests a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact Applicant's counsel at the number indicated below.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Anne Wang
Reg. No. 36,045
626/795-9900

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